HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
SECOND APPEAL NO.18 OF 2003 .

Ramkrishna Baburao Jadhav ..Appellants

Versus

Ganba Anandrao Jadhav ..Respondent

Mr.S.P.Thorat for the appellants

CORAM: S.R.SATHE, J.

DATE : 21st JUNE, 2005

P.C.

1. Heard learned Advocate for the Appellant. The Plaintiff filed suit for injunction restraining defendant from taking water out of the Plaintiff's well. The trial Court was pleased to isue injunction as prayed. Being aggrieved the Defendants filed appeal. In the appeal, the first Appellate Court held that the suit was premature. The first Appellate Court held that from the evidence on record it appears that from 27.5.1983 there was agreement in favour of defendant for taking water for four years and as the period of four years was not complete the suit was premature and on that ground the appeal was allowed and the suit was dismissed. The learned Advocate for the Appellant argued before me that in the first instnce, the First Appellate Court has not framed any specific issue with regard to the fact as to whether the suit was premature. He, therefore, submitted that non framing of such issue is substantial question of law. However, from the perusal of the judgment of the first

Appellate Court it appears that the issue with regard to suit being premature was argued by both sides and considered by First Appellate Court. So his suit was premature. It cannot be said that prejudice has been caused to the Plaintiff by non framing of specific issue with regard to suit being premature. In this view of the matter, I do not think that there is any substantial question of law involved in this case. Apparently the finding recorded by the frist appellate courtt appears to be correct. There is no necessity to interfere with the same. Hence the appeal is dismissed in limini.

. As the earlier suit has been dismissed being premature, it is nedless to say that Plaintiff would be entitled to file fresh suit if seperate cause of action arises.

(S.R.SATHE, J.)